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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 ARTURO VELAZQUEZ,

12 Plaintiff,

13 v.

14 FORD MOTOR COMPANY, et al.,

15 Defendants.  
16  
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No. 1:21-cv-00258-DAD-EPG

ORDER GRANTING PLAINTIFF'S MOTION  
TO REMAND THIS ACTION FOR LACK OF  
SUBJECT MATTER JURISDICTION

(Doc. No. 11)

18 This matter is before the court on plaintiff's motion to remand this action to the Kings  
19 County Superior Court. (Doc. No. 11.) Pursuant to General Order No. 617 addressing the public  
20 health emergency posed by the COVID-19 pandemic, plaintiff's motion was taken under  
21 submission on the papers. (Doc. No. 13.) For the reasons explained below, the court will grant  
22 plaintiff's motion to remand.

23 **BACKGROUND**

24 On November 24, 2020, plaintiff Arturo Velazquez filed this action against defendants  
25 Ford Motor Company ("Ford") and Does 1 through 10, inclusive, in the Kings County Superior  
26 Court. (Doc. No. 1-3.) Therein, plaintiff alleged the following. On or about December 18, 2018,  
27 plaintiff purchased a 2018 Ford Fiesta. (Doc. No. 11 at 7.) During the warranty period, the  
28 vehicle experienced serious defects related to the airbag system, the engine, the temperature

1 sensor, the actuator, and other electrical system defects and nonconformities. (*Id.*) Plaintiff  
2 presented the vehicle to Ford’s authorized repair centers on four occasions in the hopes of  
3 repairing the vehicle, and he contacted Ford asking that Ford buy back the vehicle pursuant to  
4 California’s lemon law. (*Id.*) Ford refused to comply and failed to repair the vehicle. (*Id.*) As a  
5 result, plaintiff brought this civil action in state court asserting claims under California’s Song-  
6 Beverly Consumer Warranty Act against defendants for breach of express and implied warranty.  
7 (*Id.* at 3.)

8 On February 24, 2021, defendant Ford removed the action to this court pursuant to  
9 28 U.S.C. §§ 1332, 1441, and 1446, on the grounds that diversity jurisdiction exists because  
10 plaintiff and defendant Ford are citizens of different states and the amount in controversy is at  
11 least \$75,000. (Doc. No. 1.)

12 On March 26, 2021, plaintiff moved to remand this action to the Kings County Superior  
13 Court because defendant’s removal was untimely, diversity jurisdiction is lacking, and because  
14 principles of comity weight in favor of this matter remaining in state court. (Doc. No. 11 at 1–2.)  
15 Pursuant to 28 U.S.C. § 1447(c), plaintiff also requests that the court award him attorneys’ fees  
16 and expenses that he has incurred as a result of defendant’s allegedly defective and improper  
17 removal of this action to federal court. (*Id.* at 15.) On April 20, 2021, defendant Ford filed an  
18 opposition to plaintiff’s motion to remand. (Doc. No. 15.) On April 27, 2021, plaintiff filed a  
19 reply thereto. (Doc. No. 16.)

## 20 LEGAL STANDARD

21 A suit filed in state court may be removed to federal court if the federal court would have  
22 had original jurisdiction over the suit. 28 U.S.C. § 1441(a). Removal is proper when a case  
23 originally filed in state court presents a federal question or where there is diversity of citizenship  
24 among the parties and the amount in controversy exceeds \$75,000. *See* 28 U.S.C. §§ 1331,  
25 1332(a).

26 “If at any time before final judgment it appears that the district court lacks subject matter  
27 jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c). “The removal statute is strictly  
28 construed against removal jurisdiction, and the burden of establishing federal jurisdiction falls to

1 the party invoking the statute.” *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838 (9th  
2 Cir. 2004) (citation omitted); *see also* *Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582  
3 F.3d 1083, 1087 (9th Cir. 2009) (“The defendant bears the burden of establishing that removal is  
4 proper.”). If there is any doubt as to the right of removal, a federal court must reject jurisdiction  
5 and remand the case to state court. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089,  
6 1090 (9th Cir. 2003); *see also* *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1118 (9th Cir. 2004).  
7 The defendant seeking removal of an action from state court bears the burden of establishing  
8 grounds for federal jurisdiction by a preponderance of the evidence. *Hunter v. Philip Morris*  
9 *USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). The district court must remand the case “[i]f at any  
10 time before final judgment it appears that the district court lacks subject matter jurisdiction.” 28  
11 U.S.C. § 1447(c); *see also* *Smith v. Mylan, Inc.*, 761 F.3d 1042, 1044 (9th Cir. 2014); *Bruns v.*  
12 *NCUA*, 122 F.3d 1251, 1257 (9th Cir. 1997).

## 13 DISCUSSION

14 In moving for remand, plaintiff contends that defendant Ford fails to establish facts  
15 necessary to support this federal court’s diversity jurisdiction over the action. Diversity  
16 jurisdiction exists in actions between citizens of different states where the amount in controversy  
17 exceeds \$75,000 exclusive of interest and costs. 28 U.S.C. § 1332.

### 18 A. Amount in Controversy

19 In addition to diversity of citizenship, the party asserting diversity jurisdiction also bears  
20 the burden of proving by a preponderance of the evidence that the amount in controversy exceeds  
21 \$75,000. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). The amount  
22 in controversy, which must be determined as of the date of removal, *see Conrad Assoc. v.*  
23 *Hartford Accident & Indem. Co.*, 994 F. Supp. 1196, 1200 (N.D. Cal. 1998), “is simply an  
24 estimate of the total amount in dispute, not a prospective assessment of [the] defendant’s  
25 liability.” *Lewis v. Verizon Comms. Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). “In calculating the  
26 amount in controversy, a court must assume that the allegations in the complaint are true and that  
27 a jury will return a verdict for plaintiffs on all claims alleged.” *Page v. Luxottica Retail North*

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1 *Am.*, No. 2:13-cv-01333-MCE-KJN, 2015 WL 966201, at \*2 (E.D. Cal. Mar. 4, 2015) (citing  
2 *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008)).

3 In an action brought pursuant to the Song-Beverly Act, a plaintiff may recover “in an  
4 amount equal to the actual price paid or payable by the buyer,” reduced by “that amount directly  
5 attributable to use by the buyer.” Cal. Civ. Code § 1793.2(d)(B)–(C). Additionally, a buyer who  
6 establishes a willful violation of the Song-Beverly Act may recover a civil penalty of up to “two  
7 times the amount of actual damages.” Cal. Civ. Code § 1794(c).

8 Defendant argues that plaintiff’s actual and consequential damages, plus the two-times  
9 civil penalty and attorneys’ fees available under Song-Beverly, together satisfy the amount in  
10 controversy. (Doc. No. 15 at 10–13.) In the notice of removal, defendant contends that the  
11 purchase price of the vehicle in question plus the estimated incidental and consequential damages  
12 equals \$26,983.33. (Doc. No. 1 at 6.) Defendant consequently asserts that the two-times civil  
13 penalty pursuant to Song-Beverly would equal \$53,966.66 and that the civil penalty plus the  
14 actual damages would therefore total \$80,949.99, surpassing the \$75,000 threshold required for  
15 the amount in controversy requirement. (*Id.*) Finally, defendant argues that the amount in  
16 controversy includes reasonable estimates of attorneys’ fees, which would further bolster the  
17 amount in controversy here. (*Id.*)

18 In his opposition, plaintiff argues that he is not requesting the original purchase price, but  
19 rather ““plaintiff is entitled to reimbursement of the purchase price paid for the subject vehicle  
20 *less that amount directly attributable to use by the plaintiff prior to the discovery of the*  
21 *nonconformities.*”” (Doc. No. 11) (citing Doc. No. 1-3 at ¶ 17) (emphasis in original). According  
22 to plaintiff, the mileage use offset in this case would be \$2,309.73. (Doc. No. 11 at 13.)  
23 Moreover, plaintiff contends that defendant will seek deductions in this case for nonmanufacturer  
24 items installed by a dealer or the buyer, which in this instance amounts to “\$2,995.00 for a service  
25 contract and \$895.00 for a GAP insurance product.” (*Id.*) These offsets would bring the actual  
26 damages total to \$17,283.60. (Doc. No 15 at 10.)

27 In its reply, defendant acknowledges plaintiff’s \$17,283.60 total but argues that “[t]he  
28 amount in controversy is established by what a plaintiff demands by way of their Complaint, not

1 by any reductions that a defendant might achieve through its defenses.” (Doc. No. 15 at 9) (citing  
2 *Geographic Expeditions, Inc. v. Estate of Lhotka ex rel. Lhotka*, 599 F.3d 1102, 1108 (9th Cir.  
3 2010)). Additionally, defendant emphasizes that even if the court were to consider the lower  
4 amount in actual damages, “[w]hen factoring in Plaintiff’s claims for attorney’s fees, the amount  
5 in controversy clearly exceeds \$75,000.00.” (Doc. No. 15 at 10.)

6 As plaintiff correctly points out, his complaint seeks only the purchase price less the  
7 amount attributable to use of the vehicle by him prior to the discovery of the nonconformities.  
8 Thus, the court concludes that the lesser \$17,283.60 total does stem directly from what plaintiff  
9 demands in his complaint. Consequently, as defendant’s own calculations make evident,  
10 plaintiff’s total potential damages are \$51,850.80 after factoring in the two-times civil penalty.<sup>1</sup>  
11 (Doc. No. 15 at 10.) This is \$23,149.20 short of satisfying the necessary amount in controversy  
12 for purposes of diversity jurisdiction.

13 The Song-Beverly Act does provide for an award of attorney’s fees. Cal. Civ. Code.  
14 § 1794(e). “[W]here an underlying statute authorizes an award of attorneys’ fees, either with  
15 mandatory or discretionary language, such fees may be included in the amount in controversy.”  
16 *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998). Moreover, “a court must  
17 include future attorneys’ fees recoverable by statute or contract when assessing whether the  
18 amount-in-controversy requirement is met.” *Fritsch v. Swift Trans. Co. of Ariz., LLC*, 899 F.3d  
19 785, 794 (9th Cir. 2018). Nevertheless, the Ninth Circuit in *Fritsch* also concludes that “district  
20 courts are well equipped to determine whether defendants have carried their burden of proving  
21 future attorneys’ fees, and to determine when a fee estimate is too speculative because of the  
22 likelihood of a prompt settlement.” *Id.* at 795. In this regard, the Ninth Circuit requires “a  
23 removing defendant to prove that the amount in controversy (including attorneys’ fees) exceeds  
24 the jurisdictional threshold by a preponderance of the evidence.” *Id.* Here, the court concludes  
25 that defendant’s attorney fee estimate is too speculative to establish the threshold amount in  
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27 <sup>1</sup> See *Lee v. FCA US, LLC*, No. CV 16-5190 PSG (MRWx), 2016 WL 11516754, at \*2 (C.D.  
28 Cal. Nov. 7, 2016) (“The Song-Beverly Act also permits Plaintiff to recover a civil penalty in the  
amount of two times the restitution.”).

1 controversy by a preponderance of the evidence. Defendant has submitted considerable evidence  
2 of attorneys' fees sought by plaintiff's counsel in other Song-Beverly cases. However, plaintiff  
3 has submitted evidence that in this case he requested a \$45,155.16 settlement at the outset of this  
4 litigation, which included all damages, attorneys' fees, and costs. (Doc. Nos. 11-1 at 17; 15 at  
5 12.) Because there is a strong presumption against removal jurisdiction, defendant has the burden  
6 of proving the jurisdictional amount is sufficient to confer jurisdiction. *Gaus v. Miles, Inc.*, 980  
7 F.2d 564, 566 (9th Cir. 1992). Thus, as noted above, any doubt regarding the existence of subject  
8 matter jurisdiction must be resolved in favor of remanding the action to state court. *Id.* Absent  
9 pure speculation as to the amount of attorneys' fees to be incurred by plaintiff, the court cannot  
10 conclude that defendant has met its burden of establishing that the amount in controversy satisfies  
11 the jurisdictional threshold. *See Cox v. Kia Motors America, Inc.*, No. 20-cv-02380-BLF, 2020  
12 WL 5814518, at \*5 (N.D. Cal. Sept. 30, 2020). Consequently, the court will grant plaintiff's  
13 motion to remand.

14 However, the court will deny plaintiff's request for an award of \$4,025.00 in attorneys'  
15 fees incurred in bringing this motion. (Doc. No. 11 at 15.) "Absent unusual circumstances,  
16 courts may award attorney's fees under § 1447(c) only where the removing party lacked an  
17 objectively reasonable basis for seeking removal. Conversely, when an objectively reasonable  
18 basis exists, fees should be denied." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005).  
19 Here, the court concludes that defendant's basis for removal was objectively reasonable.  
20 Accordingly, plaintiff's request for attorneys' fees will be denied.

## 21 CONCLUSION

22 For the reasons set forth above,

- 23 1. Plaintiff's motion to remand this action (Doc. No. 11) is granted;
- 24 2. Plaintiff's request for attorneys' fees (Doc. No. 11) is denied;

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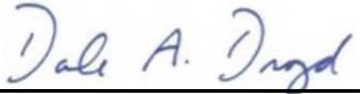
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3. This action is remanded to the Kings County Superior Court, pursuant to 28 U.S.C. § 1447(c), for lack of subject matter jurisdiction; and
4. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: **July 13, 2021**

  
UNITED STATES DISTRICT JUDGE